

May 11, 2004

MAINE PUBLIC UTILITIES COMMISSION
Investigation of the Administration of T&D Contracts
Associated with Prior Conservation Efforts

DECISION AND ORDER

WELCH, Chairman; DIAMOND and REISHUS, Commissioners

I. SUMMARY

In this Order, we conclude that there is no need for the Commission to assume administration of contracts associated with prior conservation efforts entered into by transmission and distribution (T&D) utilities. We establish a regular reporting format that will allow the Commission timely access to the data necessary to ensure prudent contract management.

II. BACKGROUND

By the Conservation Act enacted in 2002 (P.L. 2002, ch. 624), the Legislature transferred the authority to develop conservation programs from the State Planning Office (SPO) to the Commission and the authority to implement programs from the T&D utilities to the Commission. 35-A M.R.S.A. § 3211-A. Before the electric industry was restructured in 2000, planning and implementation functions had resided with electric utilities. During that period, the utilities entered into contracts, for periods of up to 20 years, with energy service companies to install conservation measures for the benefit of utility customers.

Realizing some of these contracts were still in effect, the Legislature addressed transition issues that might arise in the shift to Commission-sponsored conservation programs. The expenses associated with “prior conservation efforts,” or programs that utilities sponsored prior to March 1, 2002, are added to the expenses associated with Commission-sponsored programs to determine whether conservation spending is within the statutory minimum and maximum. 35-A M.R.S.A. § 3211-A(1)(E) and (4). The Legislature also provided that,

[e]xcept as otherwise directed by the Commission, transmission and distribution utilities shall continue to administer contracts associated with prior conservation efforts. Such contracts may not be renewed, extended or otherwise modified by transmission and distribution utilities in a manner that results in any increased expenditures associated with those contracts.

35-A M.R.S.A. § 3211-A(7).

In unallocated language in the Conservation Act, the Legislature further addressed contract administration by directing the Commission to “examine the feasibility of requiring transmission and distribution utilities to transfer the administration of contracts associated with prior conservation efforts to the Commission.” P.L. 2002, ch. 624, § 8. The Act directed us to report our findings and recommendations on this subject to the Legislature by January 1, 2004.

On August 5, 2003, we opened this Docket by issuing a “Notice of Investigation of the Administration of T&D Contracts Associated with Prior Conservation Efforts.” The Notice sought information from the utilities on the remaining contracts, their duration, and the amount of time devoted to their administration. A case conference was held on September 4, 2003. Based on information gathered in the case conference and in responses to data requests, the Staff made the following uncontested findings:

- Two of Maine’s T&D utilities, Bangor Hydro-Electric Company and Central Maine Power Company, have contractual obligations to pay for efficiency measures installed prior to the enactment of the Conservation Act.
- Bangor Hydro-Electric Company has one remaining contract with an energy service company. The contract concludes with a final payment in 2007. Management of the contract requires Bangor to confirm individual customer meter data through the use of customized software. BHE estimates contract management requires approximately six percent of the time of an individual who is familiar with the contract.
- Central Maine Power Company has 25¹ remaining contracts from its Power Partners program. The contracts are with three corporate entities. They have different lengths, with the last scheduled payment occurring in 2012. CMP estimates that it requires approximately 20% of an individual’s time to administer the contracts.
- Central Maine Power Company also has 12 contracted rebates.² With respect to nine of the contracts, all of the financial obligations have been fulfilled. Three of the contracts are still under letters of credit.

On December 17, 2003, Staff issued for discussion a conceptual proposal that described how the Commission could administer prior contracts, suggesting that there is little or no business justification for energy service contract administration to remain the responsibility of delivery companies. Written responses were received from Central

¹ There were 27 when the proceeding began and since then two have terminated.

² Contracted rebates are efficiency projects with project values based on an extended stream of expected annual savings. To secure the savings and ensure performance over time, the project savings were backed up with financial guarantees, such as letters of credit.

Maine Power Company (CMP), Bangor Hydro-Electric Company (BHE) and Cogenex (Cogenex is one of the contractual conservation service providers).

CMP agreed that Commission administration of the contracts made sense from a structural perspective, but would not endorse the concept without additional detail. BHE stated that it did not object to assignment of its remaining contract, or the ongoing administration of that contract by the Commission as described in the December 17 memo. Cogenex did not comment on the merits of the proposal but requested confidential negotiations be scheduled for further discussion.

On December 31, 2003, the Commission sent a letter to the Joint Standing Committee on Utilities and Energy indicating that the Commission staff was in the process of attempting to negotiate a resolution of the issues raised by the contracts for prior conservation efforts and by the staff proposal that the Commission could administer the contracts. We stated to the Committee that we would provide our recommendations before the end of the legislative session if negotiations were not successful.

On February 27, 2004, representatives of Central Maine Power Company, Office of Public Advocate, Cogenex, and the Commission Staff met to discuss outstanding issues. Commission Staff explained that the following advantage would result from having the Commission administer the prior conservation contracts:

- More detailed and timely knowledge of contract payments would simplify program planning for Efficiency Maine Staff.
- Simplified contract renegotiations or contract buy out discussions.
- Greater assurance of cost recovery for utilities.

In the discussion that followed, the parties generally agreed that the Commission is responsible for ensuring prudent utility expenditure of ratepayer money. It was also acknowledged that Commission Staff could gather the information necessary for it to review the prudence of conservation expenditures without making formal changes to the current contract administration process.

On March 15, 2004, the Staff issued a proposed resolution of this investigation. The Staff proposed:

1. That CMP assign its Power Partners Contracts to the Commission to administer.
2. That CMP also assign its three Contracted Rebates with current Letters of Credit to the Commission to administer.

3. That CMP release the remaining nine Contracted Rebate Participants from contractual obligations if financial commitments under the contracts have been met. If any outstanding financial commitments remain, CMP should also assign those contracts to the Commission.
4. That BHE continue to administer its lone remaining contract, but obtain final sign off from the Commission prior to issuing payment.

Responses from the parties were requested by March 23, 2004. The Office of Public Advocate and Central Maine Power Company filed timely responses. The Office of Public Advocate indicated that the Staff proposal was reasonable and in the best interests of ratepayers if carried out properly.

Central Maine Power Company expressed discomfort with the Staff proposal, in that CMP would remain legally liable for the contracts, but would not be allowed to make payment on contract obligations without Commission approval. CMP expressed concern that Commission decisions could expose the Company to breach of contract suits and legal costs. The Company would not oppose the proposal if it included provisions guaranteeing cost recovery to CMP for all contract administration actions. CMP would prefer that the cost recovery assurances to set forth in statute. Finally, CMP stated that legislative action would be necessary to implement the Staff's proposal as there is no existing statute that authorizes the Commission to act as a contract administrator for contracts to which it is not a party. CMP recommended that the Commission seek explicit legislative authority to implement the Staff proposal.

On April 17, the Commission received the late-filed comments from Cogenex SESCO, and the Industrial Energy Consumer Group (collectively referred to as Cogenex). Cogenex opposed the Staff's March 15 proposed resolution. Cogenex stated that the advantages described by the Staff could be obtained less intrusively than involving a new entity, the Commission, in the administration of these contracts. Moreover, Cogenex was apprehensive about a change in its contractual relationship with CMP given the contentious nature of that relationship during 2001 and 2002. Lastly, Cogenex stated that the Staff proposal was not legally permissible, as it won't beyond the statutory authority of the Commission and was not permitted, absent Cogenex's consent, by the terms of the CMP-Cogenex contract.

III. DECISION

Based on the comments received, we determine that the minor advantages offered by having the Commission Staff administer some or all of the contracts are outweighed by the concerns raised by CMP and Cogenex. We also agree with Cogenex that most of the advantages can be achieved by simply imposing additional reporting requirements on CMP and BHE. We do not support Central Maine Power Company's request for blanket immunity as a condition for transfer of contract administration.

Therefore, we will seek information that will permit us to review in greater detail the prudence of expenditures by CMP and BHE pursuant to the prior conservation contracts, as well as to more closely track the funds available for the Efficiency Maine programs. We direct CMP to file monthly reports on contracts associated with "prior conservation efforts" that contain:

1. The most recent estimates of Power Partners expenses for 2004-2012 reflecting any changes from audit results. The Company will include all costs charged to the Conservation Fund.
2. The dollar amount accrued for the Power Partners monthly energy savings and the cost of any consulting services associated with Power Partners.
3. Copies of any Power Partners invoices paid during the month.
4. Copies of any audits issued in that month.

Bangor Hydro should provide copies of all invoices paid and any correspondence with its remaining contractor.

Based upon this investigation, we will report to the Joint Standing Committee on Utilities and Energy that transfer of the administration of contracts associated with prior conservation efforts to the Commission is not warranted at this time. CMP and one of the remaining contractual conservation service providers believe that such transfer is not feasible absent statutory authorization. Furthermore, there does not appear to be a significant advantage to the Commission's Efficiency Maine efforts from transferring the administration of such contracts to the Commission. With this Decision and Order, we close this docket.

Dated at Augusta, Maine, this 11th day of May, 2004.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Diamond
 Reishus

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21 days** of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.